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"THE NATIONAL LABOR RELATIONS BOARD: THE UNDISCUSSED DECISIONS OF OUR AGENCY"

Delivered by:

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Chairman
National Labor Relations Board

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Anthony's Pier 4
Boston, MA

It is good to be here in Boston. This is a particularly important occasion for me for it is my first speech in this city as Chairman of the National Labor Relations Board -- and this is the place of my birth and, indeed, the land of my fathers. As some of you may know from a speech that I gave in Washington last February, my great-grandfather, the first William Benjamin Gould, came to this city when he received his honorable discharge from the United States Navy in the Charleston Naval Shipyard on September 29, 1865. He had joined the United States Navy on September 22, 1862 -- five days after bloody Antietam where the Confederates were stopped -- and the day when President Lincoln announced his intent to promulgate the Emancipation Proclamation. William Benjamin Gould was one of eight "contraband" who boarded the *USS Cambridge* from a small boat which had apparently departed Wilmington, North Carolina, the place of his birth in 1837.

Subsequent to his arrival here in Boston, the first William B. Gould then went to Nantucket where my great-grandmother, Cornelia Reed, resided and they were married in Nantucket on November 22, 1865. Yesterday, I had the opportunity to go to the Church in which they were married on that island. And frequently, when I come to Boston, I try to visit the Episcopal Church of St. John the Evangelist which was founded by the Cowley Fathers and in which my parents were married.

My grandfather and father were born in Dedham and Cambridge respectively, and we resided here until I was four years old in 1940, when my family moved to New Jersey. When I think of my own philosophical commitment to the Democratic Party, I recall my father's stories about his work for Mayor James Curley here during the Great Depression, and when I think of my own involvement -- perhaps too irregular and sporadic -- with the Episcopal Church, I think of the fact that my great-grandfather was one of the founders of the Episcopal Church of the Good Shepherd in Dedham, where four generations of William Benjamin Goulds were baptized -- and three were confirmed. (I was confirmed at St. James Episcopal Church in Long Branch, New Jersey.) He was also a mason, ultimately a contractor who employed other workers in the Dedham area, and a man who worked with his mind and hands.

Thus, all of this gives me a good feeling about returning to Boston -- and so also does my friendship with Senator Edward Kennedy of this state. I appreciate his work in carrying my nomination through the confirmation process beginning in the late summer of 1993 until my confirmation on March 2, 1994. I have had the privilege and opportunity to meet two of his older brothers -- first President (at that point Senator) John F. Kennedy, during Governor Stevenson's second Presidential campaign, when I was a student in Rhode Island in 1956, and subsequently Senator Robert F. Kennedy of New York when I worked on his Presidential campaign in '67 and '68 in New York City.

And I want to thank so many individuals here in Massachusetts who have supported our efforts to retain the funding which will permit us to function as an effective law enforcement agency. Specifically, I would like to thank Massachusetts Bar Association President James S. Dilday for the MBA's House of Delegates Resolution in support of full funding for the National Labor Relations Board, as well as both the MBA and Boston Bar Association Labor and Employment Law Sections for keeping their members informed about developments in the Board's budget. We are hopeful that the Congresss will follow the lead of the Senate Appropriations Committee and the leadership of Senator Arlen Specter of Pennsylvania and Senator Mark Hatfield of Oregon.

So it is good to return to much of my roots, notwithstanding the fact that I was raised in New Jersey and am now a Californian. This gives me a great opportunity to speak with you about something that has not received very much attention during the debates in the halls of Congress and elsewhere these past few months -- the actual decisions of the agency which I head, the National Labor Relations Board.

I think that the decisions of the Board, since our arrival in Washington in early March of last year, reflect the balanced commitment to the interests of all parties and to the policies of the Act, which I pledged to the Senate Labor and Human Resources Committee, chaired by Senator Kennedy, on October 1, 1993. I believe that I have made good on the promises that I made there two years ago and during the past 19 months of decisionmaking -- and, in this connection, I think that it is important to chronicle the important decisions in our adjudicatory process.

Of course our administrative process is as important as our decisions. You may know that I, like my predecessor and mentor, Chairman Frank McCulloch who was appointed by President Kennedy, have expressed concern with delay in the administrative process particularly in representation cases. Two weeks ago, while commemorating the 60th anniversary of the National Labor Relations Board at a conference held by Cornell University in Washington, D.C., I noted that our backlog is at a historic all-time low since 1974 (except for the years 1991 and 1992) and that the median time for processing cases has been slashed enormously, largely due to our institution of a new speed team approach since December 1994.

REPRESENTATION CASES

Consistent with that approach, in Bennett Industries Inc., 313 NLRB 1363 (June 3, 1994), a unanimous Board held that where an employer did not take a position about an issue in dispute in a representation hearing, it would be inappropriate to permit relitigation through the challenged ballot process. In that case the Board stated that:

> [I]n order to effectuate the purposes of the Act through expeditiously providing for a representation election, the Board should seek to narrow the issues and limit its investigation to areas in dispute.

Where the employer did not take a position on the question of whether an individual was a supervisor or employee within the meaning of the Act, we precluded it from doing so in the future. We said:

> The proper place for this issue to be litigated is at the hearing; to permit a party to take no position at the hearing when the subject is raised, leading to an uncontested non-supervisory finding by the Regional Director, and then to permit the same party to litigate -- or, in effect, relitigate -- the same question in a challenged ballot proceeding would be an unwise administrative practice because it would amount to condoning duplicate procedures, unjustified delays, and unnecessary expenses for all parties including the Board.

Similarly, we attempted to make our rules in the representation processes more meaningful in North Macon Health Care Facility, 315 NLRB 359 (October 26, 1994), when we held that the so-called Excelsior list of names and addresses that is provided for employees in representation campaigns within 7 days of the Regional Director's order of election should contain not merely initials but rather the full name of the employees. We arrived at this result because of the need to provide the electorate with a better informed and reasonable choice from both the union and the employer. We noted that there was no indication in the Excelsior decision that employers would deliberately delete employees' first names in working up the payroll records to comply with that decision. Said a unanimous Board:

> [A]n incomplete or inaccurate list can effectively prevent employees from obtaining information necessary for the free and fully informed exercise of their Section 7 rights.

And we went on to conclude that a finding of bad faith was not a precondition for our new clarification of the rule and that it should be applied retroactively. Our view was that the full and complete application of the rule was necessary given the need for an informed electorate.

From a policy perspective, as part of the overall effort to expedite our representation procedures, I would have preferred to have a ballot prior to any hearing about eligibility disputes, given the fact the numbers in dispute may not be

outcome determinative in the election and that many elections can be resolved without the need for unnecessary litigation. This is especially attractive given our willingness to count ballots where, for instance in Columbia Hospital for Women Medical Center, Inc., 5-RC-14033 (unpublished order) (September 29, 1995), as much as 38 percent of the employees are in dispute when ballots can be counted. But in Columbia Hospital a hearing was conducted prior to the counting of the ballots. What was at issue was whether all eligibility disputes had to be resolved prior to the ballot count itself -- and we held that we could count before resolving the disputes in the hope that the certification matter could be put to rest without time-consuming determinations about the eligibility of individuals. [1]

In Angelica Healthcare Services Group, Inc., 315 NLRB 1320 (January 18, 1995), a unanimous Board held that a hearing in some form is required prior to the time that the election takes place. In a theme that has emerged in many of our decisions, we departed from our own policy preferences -- a ballot before a hearing would expedite matters considerably -- because the statute dictates a contrary result.

Although most of our ballots are conducted at plant facilities rather than through the method of postal ballots -- we have held an increasing number of postal ballots (5 percent as opposed to a little more than 2 percent before we arrived) where it was one of the most effective ways to give employees the franchise and/or where it was economical to do so. In Shepard Convention Services, Inc., 314 NLRB 689 (August 3, 1994), we held that a mail ballot could be provided -- we mandated a postal election inasmuch as the Regional Director was held to have abused discretion in not holding one -- where it was unlikely that on-call employees would be able to exercise the franchise at the plant facility because of the irregular nature of their work, and the fact that they have other employment. Our use of postal ballots -- there have been thus far no disputes about union misconduct in the entire 60-year history of our agency, although there has been one complaint about an employer[2] -- is consistent with the political process where in my home State of California 20 percent of the voters vote by mail and in Oregon where this year the entire ballot for United States Senator will be conducted by mail.

In a number of recent cases, we have upheld Regional Directors' decisions to use mail ballots where the directors believed such a procedure justified because of the large number of employees in layoff status, the fact that the polling area was a considerable distance from the regional office and only a handful of employees were involved, the workforce worked widely diverse shifts, employees were geographically dispersed, etc.[3]

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[1] The union has filed a motion for reconsideration, and we are waiting a response from Columbia Hospital.

[2] Human Development Association Inc., 29-RC-6136 (1995).

[3] See, e.g., Golden Alaska Seafoods, Inc., 19-RC-12815 (unpublished; request for review denied April 7, 1994); Smith Enterprises, Inc., 11-RC-6076 (unpublished;

Again, most of our elections are at the plant site and will continue to be held in the workplace. However, we need to exercise the appropriate creativity in making sure that the ballot is extended to the widest number of people possible and that we function in these times of austerity in an economically effective manner.

JURISDICTION

Since March 1994, a number of very important cases have been issued relating to the jurisdiction of the Board and the Act. In Management Training Corporation, 317 NLRB No. 190 (July 28, 1995), the Board reversed the so-called ResCare doctrine[4] and established a new test for assertion of jurisdiction over employers who operate pursuant to contracts with government entities. As you know, public employers are excluded under our statute and the Board had taken the position in ResCare that in order to determine whether it would assert jurisdiction over government contractors who are in the private sector, it would examine the control over essential terms and conditions of employment retained by both the private sector employer and government to determine whether the employer was "capable of engaging in meaningful collective bargaining."

In Management Training, we rejected that approach on the ground that it was both "unworkable and unrealistic" stating that the question of whether there were sufficient matters over which union and employers could bargain was "better left to the parties at the bargaining table and, ultimately, to the employee voters in each case." We noted that the previous doctrine was an oversimplification "of the bargaining process," because it proceeded upon the assumption that economic terms are the most important aspects of the employment relationship even though other matters are negotiated at the bargaining table. Said the Board:

> In times of downsizing, recession, low profits, or when economic growth is uncertain or doubtful, economic gains at the bargaining table are minimal at best. Here the focus of negotiations may be upon such matters as

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request for review denied April 11, 1995); Laidlaw Transit, Inc., 30-RD-1160 (unpublished, request for review denied July 14, 1995); Fred Meyer, Inc., 36-RC-5661 (unpublished; request for review denied September 5, 1995); Piqunig Management Corp., 19-RC-13060 (unpublished; request for review denied August 28, 1995; Paramedic Emergency Ambulance Service, 9-RC-16512 (unpublished; request for review denied August 15, 1995); GSN Trucking Co., Inc., 29-RC-8458 (unpublished; request for review denied June 16, 1995); Single Source Transportation, 30-RC-5686 (unpublished; request for review denied June 16, 1995). Compare Shepard Convention Services, Inc., 314 NLRB 689 (August 3, 1994).

[4] ResCare, Inc., 280 NLRB 670 (1986).

> job security, job classifications, employer flexibility in assignments, employee involvement or participation and the like. Consequently, in those circumstances, it may be that the parties' primary interest is in the noneconomic area. It was shortsighted, therefore, for the Board to declare that bargaining is meaningless unless it includes the entire range of economic issues.

Similarly, we noted that a wide variety of issues such as arbitration, no strike clauses, management rights provisions and a wide variety of issues relating to transfers are often contested between the parties and that to treat them as "inconsequential," as our predecessors had, "demeans the very bargaining process we are entrusted to protect."

Equally important, the Board noted that such an approach was inconsistent with what I call the so-called "freedom of contract" line of authority of the Supreme Court[5] which has obliged the Board not to regulate, directly or indirectly, the substantive terms that are involved in the collective bargaining process. This is a matter for the parties themselves and not the Board.

Again, a theme of Management Training is similar to that which has been central to our rulemaking approach. That is to say, it is clear that a considerable amount of wasteful litigation over jurisdiction will be eliminated by virtue of the approach that we have employed. Another basis for litigation has been eliminated and thus additional burdens upon both the parties and the taxpaying public have been diminished.

Another very important case involved the Railway Labor Act and the jurisdiction of our sister agency, the National Mediation Board, as well as our own. In Federal Express Corporation, 317 NLRB No. 175 (July 17, 1995), a majority of the Board held that where a party alleges that an employer is excluded from the Board's jurisdiction and covered by the Railway Labor Act, the Board would "continue its practice of referring cases of arguable RLA jurisdiction to the NMB for an advisory opinion." However, I dissented and stated that, in my view, our agency has an obligation to determine whether a party is within our jurisdiction, and I noted that "there is no other instance in which the Board effectively asks another agency to decide the scope of the Board's own jurisdiction." I also noted that the Board has automatically deferred to decisions of the NMB and thus abdicated its responsibility to another agency to determine the existence of our own jurisdiction. I noted that this approach possessed no logical basis and was inconsistent with the exercise of primary jurisdiction articulated by the Court in the

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[5] NLRB v. American Insurance, 343 U.S. 395 (1952); NLRB v. Insurance Agents' Union, 361 U.S. 477 (1960), and American Ship Building v. NLRB, 380 U.S. 300 (1965).

landmark case of San Diego Building Trades v. Garmon, 359 U.S. 236, 245 (1959). I also noted that, given the emergence of intermodal carriers involved in trucking (traditionally within our jurisdiction) as well as air, there would be an increasing number of cases where jurisdiction was not clear -- and I noted that the issue of jurisdiction was not clear in Federal Express.

My view, which I believe will stand the test of time much more effectively than does the majority opinion, was dramatized anew in our decision of United Parcel Service, Inc., 318 NLRB No. 97 (August 25, 1995), where the Board came to the exact opposite conclusion, apparently grounding its decision to retain jurisdiction on the fact that we historically had exercised jurisdiction over the employer. As the employer in this case noted subsequent to our decision, it made no sense for the Board to abdicate its responsibility in one situation and then, apparently on some basis of a labor law doctrine of hot pursuit, exercise jurisdiction in the other.

UNION ACCESS CASES

Thirty years ago, I wrote a series of law journal articles in which I stressed the importance of access to private property by non-employee union organizers in order to implement the policies of the Act. Regrettably, from my perspective, the Supreme Court in Justice Clarence Thomas' first opinion in an 1992 decision in Lechmere v. NLRB[6] held to the contrary. Accordingly, I joined with a majority of the Board in series of 3-2 decisions to support the view that the Supreme Court's Lechmere decision requires us not to make an employer's exclusion of nonemployee organizers where the union is trying to reach the public (in Lechmere they were trying to reach the employees) an unfair labor practice. See Makro Inc. and Renaissance Properties Co., d/b/a Loehmann's Plaza, 316 NLRB 109 (January 25, 1995); Leslie Homes Inc., 316 NLRB 123 (January 25, 1995). I specifically opined that my thinking reflected in my articles and books brought me to a different conclusion, but that I was required, as Chairman of a subordinate agency, to follow the positions of the Supreme Court.

In a series of decisions, however, the Board adhered to Lechmere's retention of the doctrine that discrimination in terms of providing access between different groups serves as a basis for invalidating the employer rule. See, for instance, Riesbeck Food Markets, Inc., 315 NLRB 940 (December 16, 1994); Dow Jones and Company, Inc., 318 NLRB No. 59 (August 25, 1995).

THE BASIS FOR LIABILITY

In Esmark, Inc., 315 NLRB 763 (December 16, 1994), we dealt with a remand from the Court of Appeals for the Seventh Circuit in which the court had

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[6] 112 S. Ct. 841 (1992).

unanimously held that the Board's basis for finding Esmark liable for its subsidiary's unfair labor practices, i.e., Esmark's direct participation in the transaction involved,

> [i]s a viable theory of intercorporate liability which may be employed by the Board to hold a parent corporation . . . liable for the unfair labor practices of a subsidiary corporation.

However, the Seventh Circuit majority found that our predecessors had failed to make "specific findings" that the parent's power of control as a stockholder was exercised through improper means and we were thus ordered to provide factual support for the finding that the parent made the subsidiary's decisions for it without any concern for the subsidiary's separate legal identity. We stated our view that a reexamination of the record did not support a finding of a refusal to bargain violation under a "direct participation theory" as the court majority had enunciated it. But we found liability for the parent under Section 8(a)(3). We found that it was not necessary to impose liability through a single or joint employer or piercing of the corporate veil concept, but rather that Board precedent specifically acknowledged and accounted for the detrimental effect of the influence on a company's labor policies of business dealings by an outside employer on the employees' right to be free from discrimination for their protected activities. And thus we found that

> [t]he frequency with which employers depend on the good will of other employers for survival necessitates imposing liability under Section 8(a)(3) on third-party employers under certain circumstances.

In White Oak Coal Co., Inc., 318 NLRB No. 89 (August 25, 1995), the Board held that the corporate veil may be pierced when

> (1) the shareholder and corporation have failed to maintain separate identities, and (2) adherence to the corporate structure would sanction a fraud, promote injustice, or lead to an evasion of legal obligations.

We then elaborated the factors that we would consider in assessing whether each prong of this test had been met.[7]

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[7] Said the Board: "When assessing the first prong to determine whether the shareholders and the corporation have failed to maintain their separate identities, we will consider generally (a) the degree to which the corporate legal formalities have been maintained, and (b) the degree to which individual and corporate funds, other assets, and affairs have been commingled. [footnote omitted] Among the

ESTABLISHED BARGAINING RELATIONSHIPS AND THEIR CONTINUATION

In Lexington Fire Protection Group, Inc., 318 NLRB No. 32 (August 15, 1995), a 3-2 majority of the Board held that, where past practice supported the procedure employed, an employer could withdraw from a multiemployer association on the basis of a list which had been presented to the union at the commencement of multiemployer negotiations.

The union -- as well as the two dissenting members of the Board -- took the position that the list was a lengthy one and cumbersome and that therefore the union did not have adequate notice of withdrawal. But we noted that this was the practice historically followed and, in a separate concurrence, I said the following with regard to the procedure at issue:

> The fact that it may not be the most efficient or best in the view of this Agency or other third parties is irrelevant. It is the process devised by the parties, which they have bargained for, that supports our decision today and not our own view about what is best for them.

In Chel LaCort, 315 NLRB 1036 (December 16, 1994), the Board reconsidered its Retail Associates rule[8] which precludes withdrawal by an employer from an established multiemployer bargaining unit: "[E]xcept upon adequate

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specific factors we will consider are: (1) whether the corporation is operated as a separate entity; (2) the commingling of funds and other assets; (3) the failure to maintain adequate corporate records; (4) the nature of the corporation's ownership and control; (5) the availability and use of corporate assets, the absence of same, or undercapitalization; (6) the use of the corporate form as a mere shell, instrumentality or conduit of an individual or another corporation; (7) disregard of corporate legal formalities and the failure to maintain an arm's-length relationship among related entities; (8) diversion of the corporate funds or assets to noncorporate purposes; [footnote omitted] and, in addition, (9) transfer or disposal of corporate assets without fair consideration.

When assessing the second prong, we must determine whether adhering to the corporate form and not piercing the corporate veil would permit a fraud, promote injustice, or lead to an evasion of legal obligations. The showing of inequity necessary to warrant the equitable remedy of piercing the corporate veil must flow from misuse of the corporate form. Further, the individuals charged personally with corporate liability must be found to have participated in the fraud, injustice, or inequity that is found."

[8] See footnote 1.

written notice given prior to the date set by the contract for modification, or to the agreed-upon date to begin the multiemployer negotiations."

The United States has never engaged in multiemployer bargaining to an extent comparable to Europe -- and the process has declined in this country in recent years. But we found no reason to modify the Retail Associates rule and stated that "unusual circumstances" did not apply to situations where the multiemployer association failed, either deliberately or otherwise, to inform its employer-members of the start of the negotiations. We held that the imposition of an "unusual circumstances" exception where the multiemployer association failed to notify its members would "[e]ffectively be imposing a notice requirement on the multiemployer association and inserting ourselves into the association/member relationship unnecessarily and with uncertain consequences." This adherence to the parties' own autonomous structures and procedures is, in my view, consistent with the approach undertaken in Lexington Fire Protection.

In James Luterbach Construction Co., Inc., 315 NLRB 976 (1994), the Board considered the question of whether the Retail Associates rule applies to the construction industry and Section 8(f) agreements which do not require majority status under the Deklewa decision.[9] I agreed with the majority, which included Members Stephens and Cohen, that Retail Associates applies here, and I agreed with the view that in an 8(f) context an affirmative showing is required to bind an individual employer to a multiemployer successor contract. However, I parted company with them in their requirement that a "distinct affirmative action" to "recommit" to the union was required. I said that the following test comported with the expectations of the parties:

> To strike a proper balance between an individual employer's Deklewa rights and the promotion of stability of multiemployer bargaining in the construction industry, I would require an affirmative expression from the association to the union at the beginning of negotiations specifying the individual employers on whose behalf it was negotiating. From that point forward, I would find that the union is entitled to rely on the association's representation, and the individual employer is bound by the results of the multiemployer negotiations.

In Canteen Company, 317 NLRB No. 153 (June 30, 1995), I joined Members Browning and Truesdale to form a majority, but fashioned a separate concurring opinion positing that, in a successorship situation, an employer may unilaterally set wage rates that were different from those paid by its predecessor under the

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[9] 282 NLRB 1375 (1987).

collective bargaining agreement. The majority agreed that the wage rates were imposed without first consulting with the union pursuant to the "perfectly clear" exception in NLRB v. Burns Security Services.[10] In my concurring opinion, I expressed the view that the Board's decision in Spruce Up Corp.[11] established an "[u]nduly restrictive reading of the Supreme Court's definition of circumstances in which a successor employer must bargain about initial terms and conditions of employment."

The Spruce Up requirement that the perfectly clear obligation to notify and bargain with the union relates only to situations where the employer has misled employees about the wages, hours, or conditions of employment was, in my view, a grafting on of an additional requirement not contained in Burns itself. I pointed out that the employer's obligation was not to adhere to the predecessor agreement, but rather to simply negotiate about changes. In Canteen I said:

> To eliminate instances [from the duty to negotiate] . . . where employers express an intent to provide changed employment conditions from the obligation to negotiate under the "perfectly clear" standard announced in Burns would both render the holding on this point meaningless and also disregard the careful balance between competing interests articulated by the Court in both Burns and Fall River Dyeing.

I noted that where an employer announced his intent to adhere to the predecessor's agreement -- the one situation where the Board seemed to impose an obligation to negotiate -- there was little or nothing to bargain about. And finally, I noted that any kind of disincentive to hire the predecessor's employees -- the result that would flow from my position according to my critics -- already existed under established federal labor law.

EMPLOYEE PARTICIPATION

With the debate about the TEAM Act proceeding in the Congress, the Board in Keeler Brass Automotive Group, 317 NLRB No. 161 (July 14, 1995), issued a decision which gave me an opportunity to articulate my views about the kinds of conduct that can be engaged in under Section 8(a)(2) under existing law in a concurring opinion. I joined my colleagues in Keeler Brass in concluding that a Section 8(a)(2) violation had been made out. I expressed agreement with the view expressed in the Board's decisions in the '70s that entities were not labor organizations within the meaning of the Act and that therefore Section 8(a)(2) was not implicated where decisionmaking responsibilities had been delegated to the

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[10] 406 U.S. 292, 294-295 (1972).

[11] 209 NLRB 194 (1974), enfd. on other grounds 529 F.2d 516 (4th Cir. 1975).

council, committee or entity in question. I expressed agreement with the position taken by the Court of Appeals for the Seventh Circuit in Chicago Rawhide Mfg. Co. v. NLRB[12] and expressed the view that the employee group found lawful there need not originate with the employees but could be proposed by the employer. I stated that there were a number of considerations which were important: (1) how did the group come into existence?; (2) why did it come into existence?; and (3) the independence and composition of the group.

As I indicated previously,[13] there are more cases that await disposition by us whether Congress changes the law or not.

UNLAWFUL UNION CONDUCT

In Laborers Union Local No. 324, Laborers International Union of North America, 318 NLRB No. 66 (August 25, 1995), the Board, by 3-2 vote -- I joined the majority of Members Stephens and Cohen -- upheld the Administrative Law Judge's finding that the union violated Section 8(b)(1)(A) of the Act by adopting and maintaining an no-solicitation, no-distribution rule designed to preclude the distribution of dissident union material by threatening to have the dissident candidate for union office arrested and removed from the hiring hall and by threatening to have him arrested if he continued to disseminate such material outside the hiring hall. We held that this kind of conduct was a violation of the statute, notwithstanding the fact that it had not been formally enshrined into a formal rule, a requirement which dissenting Members Browning and Truesdale regarded as appropriate.

REMEDIES

In Fieldcrest Cannon, Inc., 318 NLRB No. 54 (August 25, 1995), we held that an employer's unfair labor practices warrant a broad cease and desist order, and that where they were "[n]umerous, pervasive, and outrageous [to the extent that] special notice and access remedies are necessary to dissipate the coercive effects of the unfair labor practices found. . . . Special access remedies and a reading by the company by the order to the employees was required." I would have granted the charging party's request that the employer's chief executive auditor read the Board's notice at the next meeting of the employer's stockholders and that it be published in the employer's 10-K report, but I could not get another Board member to concur with me. I said:

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12 221 F.2d 165 (7th Cir. 1995).

13 William B. Gould IV, address to New York University's 48th National Conference on Labor reported in *Daily Labor Report* No. 105, pgs. A1, E1 (June 1, 1995).

> To eliminate corporate disrespect for employee rights, the Respondent's stockholders should be directly informed not only of the Respondent's unlawful actions but also that the Respondent will now comply with the Act and respect the legal rights of its employees.

And finally in Frontier Hotel and Casino, 318 NLRB No. 60 (August 30, 1995), we held that an order requiring an employer to reimburse the charging party for negotiating expenses

> [i]s warranted both to make the charging party whole for the resources that were wasted because of the unlawful conduct, and to restore the economic strength that is necessary to insure return to the status quo ante at the bargaining table. . . . [T]his approach reflects the direct causal relationship between the respondent's actions in bargaining and the charging party's losses.

CONCLUSION

As you can see, from these and numerous other decisions, we have been busy these past 19 months at the Board. I think that our decisions reflect a balance and consideration for the competing interests of labor, management, and individual employees. But what is particularly important is the focus upon the Preamble's commitment to the practice and procedure of collective bargaining and the promotion of voluntarily negotiated procedures by the parties. For, after all, this is the fundamental thesis underlining both our use of Section 10(j) temporary injunctions as well as the rulemaking process. This is the basic theme which pervades our decision in Management Training itself.

We want the parties to rely upon their own resources using the creativity and spontaneity which the Act itself promotes. This is the overriding view of most of the Board majorities set forth in the cases that I have discussed. It will be my commitment to continue to provide -- as I indicated to the Senate Labor and Human Resources Committee -- a presumption in favor of stare decisis until my term expires.

It is a pleasure to return here to my roots in Boston and to be with you and to discuss our work. My sense is too often the focus upon the Board in discussions that I read about in the journals, newspapers and sometimes even in our Congress does not take into account what we in fact are doing. My hope is that this problem has been somewhat remedied by the discussion of these cases before you here today.

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